IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Narayan Singh & Others Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.1413/2003)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 4-9-2003 in Sessions Case No.107/2003 passed by Shri S.K. Jain, RHJS, Additional Sessions Judge (Fast Track) No.4, Jhalawar Camp Aklera.

Date of Judgment: March 21, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Arvind Kumar Gupta] for the appellants.
Mr. Rinesh Gupta]
Mr. Vaibhav Gehlot]
Mr. Harsh Saini]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The appellants, ten in number, were put to trial before learned Additional Sessions Judge (Fast Track) No.4 Jhalawar Camp Aklera in Sessions Case No.107/2003, who vide judgment dated September 4, 2003 convicted and sentenced them as under:-

Narayan Singh, Ram Lal, Madan Lal, Phool Singh, Rai Singh, Laxmi Narayan, Baij Singh @ Vijay Singh, Nanda, Kanwar Lal and Sumitra Bai:

U/s.302/149 IPC:

Each to suffer imprisonment for life and fine Rs.1000, in default to further suffer one year rigorous imprisonment.

U/s.326/149 IPC:

Each to suffer rigorous imprisonment for three years and fine Rs.500/- in default to further suffer six months rigorous imprisonment.

U/s.325/149 IPC:

Each to suffer rigorous imprisonment for two years and fine Rs.300, in default to further suffer three months rigorous imprisonment.

U/s.324/149 IPC:

Each to suffer rigorous imprisonment for one year and fine Rs.200/- in default to further suffer one month rigorous imprisonment.

U/s.323/149 IPC:

Each to suffer rigorous imprisonment for six months and fine Rs.100, in default to further suffer one month rigorous imprisonment.

U/s.148 IPC:

Each to suffer rigorous imprisonment for one year and fine Rs.200/- in default to further suffer one month rigorous imprisonment.

Substantive sentences were ordered to run concurrently.

2. It is the prosecution case that on October 26, 2000 parcha bayan of Rai Singh (Pw.3) was recorded at Hospital Bakani at 3 PM wherein he stated that on the said day around 12 O' clock he along with his family members Daya Nand, Ramlal, Salagram, Ratan Lal had gone to the river to worship Diwali. While they were performing Pooja at the river suddenly Narayan Singh, Ramlal, Nanda, Phool Singh, Sumitra Bai, Madan Lal, Ram Singh, Laxmi Narayan, Baij Singh, Kanwar Lal, Bal Chand and Anar Singh came armed with Gandasi, Ballam, Sword, axes and lathis and started hurling abuses. Narayan Singh then inflicted Gandasi blow on the temple of

Dayanand whereas Ram Lal gave gandasi blow on his head, Nanda and Phool Singh caused injuries on the hand of Dayanand with Ballam and lathi as a result of which Daya Nand fell down thereafter Sumitra Bai inflicted sword blow on the back of Dayanand. When Ram Lal, Salagram and Ratanlal tried to intervene Madan lal inflicted axe-blow on the head of Ramlal and Ram Singh inflicted axe-blow on his forehead. Laxmi Narayan gave axe-blow on the head of Salagram, Baij Singh inflicted axe-blow on the forehead of Salagram. Kanwar Lal, Banchand and Anar Singh gave beatings to Ratanlal with lathis. Anar Singh gave lathi-blow on the person of Rai Singh. Hearing hue and cry Dhapu Bai, Pappu Lal, Kalu Lal and Deoji came to the spot and saw the incident. Daya Nand was removed to the hospital where he succumbed to the injuries. On that parcha bayan a case was registered at Police Station Bhalta for the offence under sections 147, 148, 323, 324, 307 and 302 read with 149 IPC. The Investigating Agency embarked upon investigation of the impugned crime. After due investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.4 Jhalawar Camp Aklera. Charges under sections 148, 323, 323/149, 302, 302/149, 326/149, 325, 325/149, 324/149 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 26 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. Two witnesses in defence were examined. On hearing final submissions learned trial Judge convicted and sentenced the appellants as indicated herein above.

4. We have heard the rival submissions and scanned the material on record.

5. Prior to his death the injuries sustained by Daya Nand were examined vide injury report (Ex.P-16) which reads as under:-

1. Incised wound 20 x 5 x 8cm from medial canthus of eye to tragus of ear.
2. Incised wound 15 x 3 x 6cm along the occipital parietal area on left side.
3. Incised wound 8 x ½ x 3cm above elbow of contra joint Rt. arm front side.
4. Incised wound 8 x ½ x 4cm below the shoulder on Rt. arm lat. surface
5. Swelling undefined middle arm shaft off left
6. Incised wound 10 x 0.2 x 0.3cm back of chest post aspect Rt. side.
7. Incised wound 10 x 0.3 x 0.5cm back of chest on lt. side
8. Stitch abrasion 5 x 0.2 x 0.1cm below No.7.
9. Grose abrasion 4 x 0.2 x 0.3cm above abrasion No.6
10. Incised wound 3 x 0.2 x 0.4 shoulder region (Lt.)
11. Contusion 10 x 0.3cm acrow process to scapular region

According to Dr.Radhey Shyam Mehar (Pw.14), who conducted autopsy on the dead body vide Post Mortem Report (Ex.P-17) the cause of death was hemorrhagic shock due to profuse blood loss from multiple incised wounds.

6. In the course of incident Ram Lal (Pw.6), Salig Ram (Pw.9), Ratan Lal (Pw.5) and Rai Singh (Pw.3) also sustained injuries caused by sharp edged weapons. Whereas from the side of accused party appellants Narayan Singh and Madan Lal received injuries. Narayan Singh sustained fracture caused by sharp edged weapon. It also appears that cross case under section 326 IPC was registered against the complainant party.

7. A look at the statement of informant Rai Singh (Pw.3) goes to

show that in the cross examination he deposed that report about the incident was lodged by him at the police station. He stated as under:-

> "मेरे ज्यादा चोटें नहीं लगी थी मैं तो चल फिर रहा था। मैं थाने पर ईत्तला करने के लिए गया था। थाने में जाकर मैंने मारपीट करने वालों के नाम बता दिये थे। फिर वहां पर मेरे हस्ताक्षर कराये थे।"

This report was concededly withheld by the prosecution. An adverse inference may therefore be drawn against the prosecution. Rai Singh further deposed that appellant Narayan Singh had also sustained injury and cross case under section 326 IPC was pending against him.

8. Gopi Chand IO (Pw.20) in his deposition stated thus:-

> "मैं दिनांक 26.10.2000 को थाना भालता पर थाना अधिकारी के पद पर था। उस दिन 1.00 पी.एम. पर विश्वसनीय सूत्रों से सूचना मिली कि ग्राम रोज्या में गूजर जाति में आपस में झगडा हो गया है।"

In his cross examination he admitted that Narain Singh sustained injuries:-

> "नारायण सिंह का हाथ कटा हुआ था। वह भी अस्पताल में मिला था।"

9. Appellant Narain Singh appeared as defence witness (Dw.2). He got exhibited his X-ray report (Ex.D-2). FIR of the cross case and charge sheet also got exhibited as Ex.D-4 and Ex.D-5.

10. Factual situation that emerges from the material on record may be summarized as under:-

(i) Cross case under section 326 IPC was registered against the members of the complainant party.

(ii) Grievous injury caused by sharp edged weapon to Narain Singh was not explained by the prosecution.

(iii) FIR lodged by Rai Singh (Pw.3) at the police station was withheld by the prosecution and Parcha Bayan appears to have been recorded after examination of the injuries sustained by the deceased.

(iv) Free fight ensued between the parties.

11. Since the FIR lodged by Rai Singh (Pw.3) has been withheld by the prosecution, we draw adverse inference against prosecution. Had the FIR been produced the names of actual assailants could be known. In the event of non production of original FIR the possibility of over implication of the accused cannot be ruled out. Having closely scanned the evidence adduced at the trial, we find it consistent qua appellants Narain Singh and Ram Lal only. So far participation of co-appellants viz. Madan Lal, Phool Singh, Rai Singh, Laxmi Narayan, Baij Singh @ Vijay Singh, Nanda, Kanwar Lal and Sumitra Bai is concerned we find that they have been over implicated in the case and we grant them benefit of doubt. Since on the date of incident free fight ensued and the complainant party was also armed with sharp edged weapons, it cannot be said that the assailants did share common intention. The injuries sustained by the deceased in the course of sudden and free fight resulted in his death. In the facts and circumstances of the case it could not be said that appellants Narain Singh and Ram Lal acted in cruel or unusual manner and the case against these appellants clearly fell within Exception 4

of Section 300 IPC.

12. For these reasons, we dispose of the instant appeal in the following terms:-

> (i) We partly allow the appeal of appellants Narayan Singh and Ram Lal and instead of section 302/149 IPC, we convict each of them under section 304 part II IPC. Looking to the fact that the appellants have already undergone confinement for a period more than six years the ends of justice would be met in sentencing them to the period already undergone by them in confinement. We however acquit the appellants of the charges under sections 148, 323/149, 324/149, 325/149 and 326/149 IPC. The appellants Narayan Singh and Ram Lal, who are in jail, shall be set at liberty forthwith, if they are not required to be detained in any other case.
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> (ii) We allow the appeal of appellants Madan Lal, Phool Singh, Rai Singh, Laxmi Narayan, Baij Singh @ Vijay Singh, Nanda, Kanwar Lal and Sumitra Bai and acquit them of the charges under sections 148, 323/149, 324/149, 325/149, 326/149 and 302/149 IPC. The appellants Sumitra Bai, Kanwar Lal, Baij Singh @ Vijay Singh, Laxmi Narayan and Phool Singh are on bail, they need not surrender and their bail bonds stand discharged. The appellants Madan Lal, Rai Singh S/o Amar Singh and Nanda, who are in jail, shall be set at liberty forthwith, if they are not required to be detained in any other case.
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> (iii) The impugned judgment of learned trial court stands

modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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